



General Assembly

February Session, 2010

***Raised Bill No. 123***

LCO No. 382

\*00382\_\_\_\_ENV\*

Referred to Committee on Environment

Introduced by:  
(ENV)

***AN ACT CONCERNING PRESERVING NATURAL VEGETATION NEAR  
WETLANDS AND WATERCOURSES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-38 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 As used in sections 22a-36 to 22a-45a, inclusive, and section 3 of this  
4 act:

5 (1) "Commissioner" means the Commissioner of Environmental  
6 Protection;

7 (2) "Person" means any person, firm, partnership, association,  
8 corporation, limited liability company, company, organization or legal  
9 entity of any kind, including municipal corporations, governmental  
10 agencies or subdivisions thereof;

11 (3) "Municipality" means any town, consolidated town and city,  
12 consolidated town and borough, city and borough;

13 (4) "Inland wetlands agency" means a municipal board or

14 commission established pursuant to and acting under section 22a-42;

15 (5) "Soil scientist" means an individual duly qualified in accordance  
16 with standards set by the federal Office of Personnel Management;

17 (6) "Material" means any substance, solid or liquid, organic or  
18 inorganic, including, but not limited to soil, sediment, aggregate, land,  
19 gravel, clay, bog, mud, debris, sand, refuse or waste;

20 (7) "Waste" means sewage or any substance, liquid, gaseous, solid or  
21 radioactive, which may pollute or tend to pollute any of the waters of  
22 the state;

23 (8) "Pollution" means harmful thermal effect or the contamination or  
24 rendering unclean or impure of any waters of the state by reason of  
25 any waste or other materials discharged or deposited therein by any  
26 public or private sewer or otherwise so as directly or indirectly to  
27 come in contact with any waters;

28 (9) "Rendering unclean or impure" means any alteration of the  
29 physical, chemical or biological properties of any of the waters of the  
30 state, including, but not limited to change in odor, color, turbidity or  
31 taste;

32 (10) "Discharge" means the emission of any water, substance or  
33 material into waters of the state whether or not such substance causes  
34 pollution;

35 (11) "Remove" includes, but shall not be limited to drain, excavate,  
36 mine, dig, dredge, suck, bulldoze, dragline or blast;

37 (12) "Deposit" includes, but shall not be limited to, fill, grade, dump,  
38 place, discharge or emit;

39 (13) "Regulated activity" means any operation within or use of a  
40 wetland or watercourse involving removal or deposition of material,  
41 or any obstruction, construction, alteration or pollution, of such

42 wetlands or watercourses, but shall not include the specified activities  
43 in section 22a-40, as amended by this act;

44 (14) "License" means the whole or any part of any permit, certificate  
45 of approval or similar form of permission which may be required of  
46 any person by the provisions of sections 22a-36 to 22a-45a, inclusive;

47 (15) "Wetlands" means land, including submerged land, not  
48 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which  
49 consists of any of the soil types designated as poorly drained, very  
50 poorly drained, alluvial, and floodplain by the National Cooperative  
51 Soils Survey, as may be amended from time to time, of the Natural  
52 Resources Conservation Service of the United States Department of  
53 Agriculture;

54 (16) "Watercourses" means rivers, streams, brooks, waterways,  
55 lakes, ponds, marshes, swamps, bogs and all other bodies of water,  
56 natural or artificial, vernal or intermittent, public or private, which are  
57 contained within, flow through or border upon this state or any  
58 portion thereof, not regulated pursuant to sections 22a-28 to 22a-35,  
59 inclusive. Intermittent watercourses shall be delineated by a defined  
60 permanent channel and bank and the occurrence of two or more of the  
61 following characteristics: (A) Evidence of scour or deposits of recent  
62 alluvium or detritus, (B) the presence of standing or flowing water for  
63 a duration longer than a particular storm incident, and (C) the  
64 presence of hydrophytic vegetation;

65 (17) "Natural vegetation" means naturally occurring shrubs, trees or  
66 other plants, but does not include lawns or manicured grass areas;

67 ~~[(17)]~~ (18) "Feasible" means able to be constructed or implemented  
68 consistent with sound engineering principles; and

69 ~~[(18)]~~ (19) "Prudent" means economically and otherwise reasonable  
70 in light of the social benefits to be derived from the proposed regulated  
71 activity provided cost may be considered in deciding what is prudent

72 and further provided a mere showing of expense will not necessarily  
73 mean an alternative is imprudent.

74 Sec. 2. Subsection (a) of section 22a-40 of the general statutes is  
75 repealed and the following is substituted in lieu thereof (*Effective*  
76 *October 1, 2010*):

77 (a) The following operations and uses shall be permitted in  
78 wetlands and watercourses, as of right:

79 (1) Grazing, farming, as described in section 1-1, nurseries,  
80 gardening [and harvesting of crops] and farm ponds of three acres or  
81 less essential to the farming operation, and activities conducted by, or  
82 under the authority of, the Department of Environmental Protection  
83 for the purposes of wetland or watercourse restoration or  
84 enhancement or mosquito control. The provisions of this subdivision  
85 shall not be construed to include road construction or the erection of  
86 buildings not directly related to the farming operation, relocation of  
87 watercourses with continual flow, filling or reclamation of wetlands or  
88 watercourses with continual flow, clear cutting of timber except for the  
89 expansion of agricultural crop land, the mining of top soil, peat, sand,  
90 gravel or similar material from wetlands or watercourses for the  
91 purposes of sale;

92 (2) A residential home [(i)] (A) for which a building permit has been  
93 issued, or [(ii)] (B) on a subdivision lot, provided the permit has been  
94 issued or the subdivision has been approved by a municipal planning,  
95 zoning or planning and zoning commission as of the effective date of  
96 promulgation of the municipal regulations pursuant to subsection (b)  
97 of section 22a-42a or as of July 1, 1974, whichever is earlier, and further  
98 provided no residential home shall be permitted as of right pursuant  
99 to this subdivision unless the permit was obtained on or before July 1,  
100 1987;

101 (3) Boat anchorage or mooring;

102 (4) Uses incidental to the enjoyment and maintenance of residential  
103 property, such property defined as equal to or smaller than the largest  
104 minimum residential lot site permitted anywhere in the municipality,  
105 provided in any town, where there are no zoning regulations  
106 establishing minimum residential lot sites, the largest minimum lot site  
107 shall be two acres. Such incidental uses shall include maintenance of  
108 existing structures and landscaping but shall not include removal or  
109 deposition of significant amounts of material from or onto a wetland  
110 or watercourse or diversion or alteration of a watercourse;

111 (5) Construction and operation, by water companies as defined in  
112 section 16-1 or by municipal water supply systems as provided for in  
113 chapter 102, of dams, reservoirs and other facilities necessary to the  
114 impounding, storage and withdrawal of water in connection with  
115 public water supplies except as provided in sections 22a-401 and 22a-  
116 403; and

117 (6) Maintenance relating to any drainage pipe which existed before  
118 the effective date of any municipal regulations adopted pursuant to  
119 section 22a-42a or July 1, 1974, whichever is earlier, provided such pipe  
120 is on property which is zoned as residential but which does not  
121 contain hydrophytic vegetation. For purposes of this subdivision,  
122 "maintenance" means the removal of accumulated leaves, soil, and  
123 other debris whether by hand or machine, while the pipe remains in  
124 place.

125 Sec. 3. (NEW) (*Effective October 1, 2010*) (a) Except as provided in  
126 subsection (b) of this section, when considering an application for a  
127 proposed regulated activity, a municipal inland wetlands agency shall  
128 not allow the destruction of natural vegetation within (1) one hundred  
129 feet of a wetlands or watercourse, or (2) the distance around the  
130 wetlands or watercourse regulated by the municipality pursuant to  
131 subsection (f) of section 22a-42a of the general statutes if such distance  
132 is less than one hundred feet from such wetlands or watercourse.

133 (b) A municipal inland wetlands agency shall allow the removal of

134 natural vegetation in connection with a proposed regulated activity if  
 135 (1) the applicant can demonstrate that the removal will have no likely  
 136 impact or effect on the physical characteristics of such wetlands or  
 137 watercourse, or (2) there is no feasible or prudent alternative to the  
 138 removal, provided such proposed activity meets all other permitting  
 139 requirements and applicable provisions of chapter 440 of the general  
 140 statutes.

141 (c) The provisions of this section shall not apply to construction  
 142 activities that are ancillary to existing residential uses, including, but  
 143 not limited to, the construction of structures such as decks,  
 144 outbuildings, fences or walkways. Any such construction activities  
 145 shall be subject to all other permitting requirements and applicable  
 146 provisions of chapter 440 of the general statutes and any natural  
 147 vegetation in proximity to such construction activities shall be  
 148 protected or restored to the maximum extent practicable.

149 (d) The as of right uses specified in section 22a-40 of the general  
 150 statutes, as amended by this act, shall be permitted in areas of natural  
 151 vegetation located within the distance around the wetlands or  
 152 watercourse regulated by the municipality in accordance with  
 153 subsection (a) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	22a-38
Sec. 2	<i>October 1, 2010</i>	22a-40(a)
Sec. 3	<i>October 1, 2010</i>	New section

***Statement of Purpose:***

To protect natural vegetation in areas near wetlands and watercourses.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*